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3 UNITED STATES DISTRICT COURT  
4 EASTERN DISTRICT OF WASHINGTON  
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6 UNITED STATES OF AMERICA,

7 Plaintiff,

8 vs.  
9

10 MANUEL VARGAS, JR.,

11 Defendant.  
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)  
) No. CR-10-0038-JLQ-1  
)

) MEMORANDUM OPINION AND  
) ORDER ON MOTION TO REDUCE  
) SENTENCE  
)  
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13 Before the court is the Motion To Reduce Sentence (ECF No. 54) filed on behalf  
14 of the Defendant by Andrea George, Federal Defender for the Eastern District of  
15 Washington. The Motion was filed following the adoption of Amendment 782 to the  
16 United States Sentencing Guidelines which made individuals sentenced pursuant to the  
17 Guidelines for federal drug offenses eligible for a 2 level reduction in the Offense Level  
18 and consideration by the court as to whether a reduced sentence should be imposed.  
19 Joseph Harrington, Assistant United States Attorney, appeared for the Government and  
20 filed a Response (ECF No. 56) to the Motion To Reduce Sentence. Other than one  
21 institutional violation there is nothing before the court concerning the Defendant's term  
22 of incarceration and there is no evidence of his having taken advantage of institution  
23 programs to better himself.

24 The Presentence Report (ECF Nos. 42 & 55) sets forth the Defendant's  
25 background, offenses, and criminal history. The Defendant is now 56 years of age and  
26 has an ongoing history of assault and drug dealing convictions commencing at the age  
27 of 20. He has two prior felony drug convictions which, had the Government filed the

1 appropriate § 851 Informations, would have mandated a life sentence without parole on  
2 the instant charge, rather than the drug quantity mandatory minimum of ten years. Of  
3 obvious concern to the court in deciding the present Motion is the fact that at the time of  
4 his sentencing on the instant charge, the outstanding state court First Degree Assault-  
5 Deadly Weapon charge involving the shooting of the victim, was pending and not  
6 resolved until after the sentencing in this court. The factual background of that state  
7 charge is set forth in ¶s 81-84 of the Presentence Report. Following the Defendant's  
8 sentencing by the undersigned, the Defendant plead guilty to the state court First Degree  
9 Assault charge and was sentenced to a term of one year to run concurrent with the  
10 sentence imposed in this federal court. The assault and shooting by the Defendant took  
11 place during the time of the ongoing drug dealing which led to his arrest on the federal  
12 drug charge.

13 Despite the court's concern over the failure of the Government to file either of the  
14 Defendant's prior felony drug conviction Informations the court determined the final  
15 sentencing Offense Level as 31 (incorrectly stated as a 34 in the Judgment). The court  
16 adopted the Criminal History recommendation of a Category II. This Category did not  
17 include one of the Defendant's felony assault nor one of the Defendant's felony drug  
18 distribution convictions due to their age. With a resultant Sentencing Guidelines Range  
19 of 121-151 months, the court imposed a sentence of 151 months followed by a 15 year  
20 term of Supervised Release.

21 The court has fully reviewed the Defendant's criminal history, including the  
22 offenses that were, and were not, counted in a determination of the Defendant's  
23 Sentencing Guideline Range of 121-151 months. If the same calculations were used in  
24 the resolution of the pending Motion, the sentencing Offense Level would be a 29 with  
25 a resultant Guideline Range of 97-121 months. However, such a calculation would  
26 ignore the Defendant's true Criminal History including the state court sentence First  
27 Degree Assault conviction where the concurrent sentence was not imposed until after this

1 court's 151 month sentence. That conviction was based upon the Defendant shooting the  
2 victim three times. Had that conviction and sentence been imposed prior to that of this  
3 court, at a minimum, the Defendant's Criminal History would be a Category III which  
4 with a reduced Offense Level of 29 would result in a Guideline Range of 108-135  
5 months. A Criminal History of Category III more accurately reflects, at a minimum, the  
6 true and current Criminal History of the Defendant than that of a Category II.

7 In addition to the foregoing, in ruling on a motion to reduce a sentence, the court  
8 is guided by Sentencing Guideline 1B1.10 which provides in part: "The court shall  
9 consider the nature and seriousness of the danger to any person or the community that  
10 may be posed by a reduction in the defendant's term of imprisonment in determining  
11 whether such reduction is warranted, and the extent of such reduction." The court has  
12 considered the Defendant's long-standing history of drug dealing and violent assaults in  
13 determining whether its previously imposed top of the Guidelines sentence of 151 months  
14 should be reduced. Adopting the rule of lenity and considering all of the factors set forth  
15 in 18 U. S.C. § 3553(a), the court has determined to reduce the Defendant's sentence  
16 from 151 months to one of 131 months followed by the 15 year term of Supervised  
17 Release on the same terms and conditions previously imposed.

18 IT IS SO ORDERED.

19 The Clerk shall enter this Order and furnish copies to counsel.

20 Dated this 31st day of March, 2015.

21 s/ Justin L. Quackenbush  
22 JUSTIN L. QUACKENBUSH  
23 SENIOR UNITED STATES DISTRICT JUDGE  
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